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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Hope Academy Broadway Campus, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	,Case No. 10CVH-05-7423
	:	
White Hat Management, LLC, et al.,	:	Judge John F. Bender
	:	
Defendants.	:	

DECISION AND ENTRY
ON JURISDICTION AND DISCOVERY

BENDER, J.

Background

A community school¹ is accountable to the Department of Education through its sponsor for the quality of the education it provides to Ohio children, which is paid for entirely with public funds, and to the Auditor to be sure public funds are spent as the law allows. R.C. Chapter 3314. A community school can enter into a contract for any services necessary for its operation. R.C. 3314.01(B). The Department of Education requires a community school to meet academic performance standards, which are the same whether it is managed by its own staff or by a non-profit, a for-profit, or a public benefit corporation.

Plaintiffs Hope Academy Broadway Campus, et al. ("the Plaintiff Schools") entered into management agreements with defendants White Hat Management, LLC, et al. ("the White Hat Defendants"). R.C. 3314.024 requires a management company that receives more than twenty percent of a community school's annual revenue to provide a detailed accounting of how those funds were spent. This information shall be included in the footnotes of the school's financial

¹ Also commonly referred to as a charter school.

statement, which is subject to audit by the Auditor. The White Hat Defendants receive 96% of the Plaintiff Schools' annual revenue.²

The Plaintiff Schools filed a motion to compel the White Hat Defendants to disclose detailed financial information showing how it spent the funds it received from the Department of Education to operate the Plaintiff Schools. The White Hat Defendants provided some information, including the financial reports of the Plaintiff Schools that they filed with the Auditor of State ("Auditor"). The Plaintiff Schools claim this information is not detailed enough to allow them to fulfill their duties as the schools' governing authorities.

The White Hat Defendants contend that because the management contracts allocate most operational decision-making responsibilities to them and because the Plaintiff Schools' statutory financial reporting requirements have been satisfied, requiring them to produce more detailed financial information is unduly burdensome. The Plaintiff Schools and the Department of Education cite to R.C. 3314.024, which requires management companies that receive more than twenty percent of the annual gross revenues of a community school to provide a "detailed accounting" of how the funds are spent.

The White Hat Defendants reply that the statute requires the information in the "detailed accounting" to be included in the footnote of the financial statements which have already been filed with the Auditor. The White Hat Defendants state that because the Auditor has accepted their financial reports, they have done what the law requires and respectfully suggest that the court lacks authority to require them to do more.

The White Hat Defendants have challenged the court's jurisdiction, albeit without filing a formal motion. "Whenever it appears by suggestion of the parties or otherwise that the court

² The other 4% of a community school's revenue goes to the community school's governing authority (3.5%) and its sponsor (0.5%).

lacks jurisdiction of the subject matter, the court shall dismiss the action." Civ.R. 12(H)(3).

After an October 26, 2011 status conference, on its own motion the court ordered the parties to submit briefs on this issue by December 5, 2011. The court also invited the Auditor to submit a brief as an amicus curia. On December 12, 2011, the Auditor submitted a very thorough brief which includes an overview of the steps taken pursuant to R.C. 3314.024.

Jurisdiction

"Jurisdiction connotes the power to hear and decide a case on its merits." *New York Chicago & St. Louis Rd. Co. v. Matzinger* (1940), 136 Ohio St. 271, 276. A "court of common pleas is a court of general jurisdiction. It embraces all matters at law and in equity that are not denied to it." *Schucker v. Metcalf* (1986), 22 Ohio St.3d 33, 34, quoting *Saxton v. Seiberling* (1891), 48 Ohio St. 554, 558-559. Any person whose rights are affected by a statute or a contract may ask a court to determine its meaning or validity. R.C. 2721.03; *Victory Academy of Toledo v. Zelman*, 10th Dist. No. 07AP-1067, 2008-Ohio-3561, ¶8. Accordingly, this court has jurisdiction to declare the Plaintiff Schools' rights under Ohio law, and under their management agreements with the White Hat defendants.

Under the management agreements, the White Hat Defendants agreed to keep the Plaintiff Schools' financial records. Those records must be kept in the same manner as all other public schools according to rules established by the Auditor, and must be subject to audit by the Auditor. R.C. 3314.03(A)(8). The White Hat Defendants had financial statements for the Plaintiff Schools prepared and filed them with the Auditor. The Auditor accepted them. The White Hat Defendants question whether the court has the authority to order them to provide the Plaintiff Schools with more financial information than they already provided to the Auditor.

The General Assembly vests primary responsibility for oversight of fiscal matters with the Auditor. The General Assembly requires the Auditor to audit all public offices. R.C. 117.10. A "public office" is an organized body or entity "established by the laws of this state for the exercise of any function of government." R.C. 117.01(D). The White Hat Defendants were not established by statute; nor do they meet the definition of "public office." Therefore, they are not subject to mandatory audits by the Auditor.³

"The auditor of state also *may* audit the accounts of private institutions, associations, boards, and corporations receiving public money for their use and may require of them annual reports in such form as the auditor of state prescribes." R.C. 117.10 (Emphasis added). While audits of community schools are mandatory, audits of the management companies they hire are not. Although the Auditor may audit a management company because it receives public money for its use, whether or not to conduct an audit is determined solely and entirely by the Auditor in the exercise of his sound discretion, not by a court.

The Plaintiff Schools suggest that the court could order the Auditor to perform a "special audit"⁴ of the White Hat Defendants. The Auditor "*may* conduct an audit of a public office at any time when so requested by the public office or upon the auditor of state's own initiative if the auditor of state has reasonable cause to believe that an additional audit is in the public interest." R.C. 117.11(B) (Emphasis added). First, the White Hat Defendants are not a "public office." Second, the decision to conduct a special audit is solely within the Auditor's discretion. Nothing in the Revised Code allows a court to order the Auditor to conduct a special audit.

³ This court previously held that the White Hat Defendants *do* fall within the definition of "public official," which means "any officer, employee, or duly authorized representative or agent of a public office." R.C. 117.01(E). R.C. 117.10 requires the Auditor to audit "public offices." It does not apply to "public officials."

⁴ A special audit is a financial audit undertaken at the Auditor's initiative, in contrast to a "regular audit" performed according to a schedule set forth in R.C. 117.11 ("Frequency and scope of audits; * * *"). See *State ex rel. Oriana House, Inc. v. Montgomery*, 10th Dist. No. 04AP-492, 2005-Ohio-3377, ¶66, reversed on other grounds, 110 Ohio St.3d 456, 2006-Ohio-4854.

The Auditor acknowledges that Chapter 117 of the Revised Code does not preclude other means of inquiry into how public funds are spent. Auditor's Brief, p. 7-8. While R.C. 117.28 provides the Auditor with a method to recover public money or property, other statutes and the common law also allow the recovery of public funds by other entities without a prior finding by the Auditor that the funds were improperly spent.

Analysis of R.C. 3314.024

R.C. 3314.024, titled "Detailed accounting by management company; audits", states:

A management company that provides services to a community school that amounts to more than twenty per cent of the annual gross revenues of the school shall provide a detailed accounting including the nature and costs of the services it provides to the community school. This information shall be included in the footnotes of the financial statements of the school and be subject to audit during the course of the regular financial audit of the community school.

The White Hat Defendants receive more than twenty per cent of the annual gross revenues of the Plaintiff schools. The White Hat Defendants do not disagree that the statute requires a detailed accounting; in fact, they insist it has already been provided. The parties strongly disagree on to whom the detailed accounting must be provided.

According to the Plaintiff Schools and the Department of Education, the statute requires the White Hat Defendants to provide the Plaintiff Schools with a detailed accounting of the nature and costs of the services it provided, and to include that information in the Plaintiff Schools' financial statements, which are subject to audit by the Auditor. These parties contend the statute serves two purposes: it provides a community school and the Auditor with more detailed information on how a management company spent public funds.

According to the White Hat Defendants, the statute requires them to provide a detailed accounting of the nature and costs of the services they provided to the Plaintiff Schools and that

the information must be included in the Plaintiff Schools' financial statements, which are subject to audit by the Auditor. The White Hat Defendants insist that the only purpose of the statute is to provide the Auditor with more detailed information on how a management company spent public funds, and that because that information has now been filed with the Auditor, they have met their obligations under the statute and have no further duty to provide more detailed information to the Plaintiff Schools.

The Auditor states that "the *sole* purpose of the required 'accounting' is to allow the school to prepare the Footnote for the Auditor's review, *not* to aid the school in conducting an independent evaluation of how the management company is using its resources." Auditor's Brief, p. 5 (Emphasis sic). The Auditor further states that R.C. 3314.024 does not provide a community school with a basis to demand additional financial information from a management company beyond what it has already furnished to the Auditor. "Despite the use of the phrase in the statute, R.C. 3314.024 does not actually require a management company to provide a "detailed accounting" to the schools it serves." *Id.* Long-standing rules of statutory construction require the court to respectfully disagree with the Auditor on this point. With very few exceptions, and this is not one of them, a statute says what it means and means what it says.

The General Assembly expresses a statute's intent in its language. *Rice v. CertainTeed Corp.*, 84 Ohio St.3d 417, 419, 1999-Ohio-361. A court must examine a statute's plain language and must apply it as written when its meaning is definite and not ambiguous. *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶18. No words in a statute should be disregarded; every word should be given its usual and ordinary meaning unless the General Assembly supplied another definition. *Carter v. Youngstown Div. of Water* (1946), 146 Ohio St. 203, paragraph one of the syllabus. Where different language is used, it is presumed that a

different meaning is intended. *State ex rel. Cordray v. Court of Claims of Ohio*, 190 Ohio App.3d 161, 2010-Ohio-4437, ¶27. A statute is ambiguous only if it is subject to more than one reasonable interpretation. *Clark v. Scarpelli*, 91 Ohio St.3d 271, 274, 2001-Ohio-39.

The detailed accounting that R.C. 3314.024 requires a management company to provide, so that the information can be included in the footnote of a community school's financial statement, is for the audit of the *community school*, not the management company. Public funds are allocated to the *community school*, not the management company. A community school remains accountable for how public funds are spent, whether it contracts with a management company or not. *Cordray v. International Preparatory School, et al.*, 128 Ohio St.3d 50, 2010-Ohio-6136, ¶12-22. Because the *community school*, not the management company, is ultimately responsible to the Auditor, the detailed accounting must be provided to the *community school*.⁵

R.C. 3314.03(A)(8) requires a community school to file financial reports with the Auditor. A community school that does not hire a management company already *has* the information it needs to prepare a detailed accounting for its financial statements because it spent those funds directly. When a community school hires a management company and pays it significant amounts of public funds, it is incumbent upon the management company to properly account to the community school for those funds because the community school must account for them to the Auditor. Thus, a detailed accounting is necessary when a management company receives significant amounts of public funds from a community school. The General Assembly has determined that the threshold for a detailed accounting is twenty per cent of gross revenues.⁶

⁵ The White Hat Defendants prepared the Plaintiff Schools' financial statements and filed them with the Auditor because they agreed to do so as part of the management agreement, not because the Revised Code requires them do so.

⁶ Nothing prevents a community school from hiring more than one management company and paying more than twenty percent of its gross revenues to both of them. In that case, there is can be no question that the detailed accounting must be provided to the community school itself, because only one financial statement is filed with the Auditor.

The Plaintiff Schools must keep financial records "in the same manner as are financial records of school districts, pursuant to rules of the auditor of state." R.C. 3314.03(A)(8). As part of the management agreements, the White Hat Defendants contracted to provide this service on the Plaintiff Schools' behalf. Accordingly, the White Hat Defendants hired an accounting firm⁷ to prepare an Audit Report Letter and Comprehensive Annual Financial Report ("report") for each Plaintiff School.⁸

The Auditor expresses the opinion that "the *sole* purpose of the required "accounting" is to allow the school to prepare the Footnote for the Auditor's review, *not* to aid the school in conducting an independent evaluation of how the management company is using its resources." Auditor's Brief, p. 5 (Emphasis sic). The White Hat Defendants take this view one step further and claim that because they provided the "detailed accounting" to the Auditor in the footnote to the Plaintiff Schools' financial reports, and because the Auditor has accepted the reports, they do not have to provide the underlying financial information to the Plaintiff Schools. This view is flatly incorrect.

Certainly, there is no basis to suggest that there is anything improper in the Plaintiff Schools' financial reports. However, as the Auditor's acceptance letter attached to each Audit Report Letter makes clear, his acceptance means just that and nothing more.

We have reviewed the *Independent Auditor's Report* of the [Plaintiff School], * * * for the audit period July 1, 2009 through June 30, 2010. Based upon this review, we have accepted these reports in lieu of the audit required by Section 117.11, Revised Code. The Auditor of State did not audit the accompanying financial statements and, accordingly, we are unable to express, and do not express an opinion on them.

⁷ Any entity receiving public funds may hire an independent accounting firm to conduct its audit instead of having the Auditor conduct it. R.C. 117.10(G)(3).

⁸ The White Hat Defendants submitted a copy of the most recent report for each Plaintiff School as exhibits.

Our review was made in reference to the applicable sections of legislative criteria, as reflected by the Ohio Constitution, and of the Revised Code, policies, procedures, and guidelines of the Auditor of State, regulations and grant requirements. The [Plaintiff School] is responsible for compliance with these laws and regulations. (Emphasis added).

The Plaintiff Schools are responsible for compliance with Ohio laws and regulations on how public funds are spent, and for the information in the financial reports that the White Hat Defendants submitted to the Auditor on the Plaintiff Schools' behalf. Therefore, the law entitles the Plaintiff Schools to all information that the White Hat Defendants used to prepare them.

The Auditor's interpretation that R.C.3314.024 was enacted solely to allow the school to prepare the Footnote for the Auditor's review does not mean that a community school cannot also use that information, or any other financial or non-financial information it requires, to independently review the performance of the management company. There is absolutely no reason for a community school or a management company to involve the Auditor of State in what is essentially a dispute over how a contract for services has been performed.⁹ The Auditor is charged with determining whether public funds are spent legally. The Department of Education, a community school, and its sponsor are charged not only with spending public funds legally, but also with spending them properly to provide Ohio's children with a quality education. A management company is charged with living up to its contract with a community school.

When read in context, R.C. 3314.024 is not ambiguous. This statute requires a management company that receives more than twenty percent of a community school's annual gross revenues to provide a detailed accounting including the nature and costs of the services it provides. It also requires this information to be included in the footnotes of the community school's financial statements, which are subject to audit pursuant to R.C. 117.10. It necessarily

⁹ *Decision and Entry Denying Motion of White Hat Defendants to Dismiss Cross-Claims by Defendant Ohio Dept. of Education*, Filed October 17, 2011, p. 5-7.

follows that the detailed accounting required by R.C. 3314.024 must be provided to the entity legally responsible for providing the community school's financial statements to the Auditor, which is the community school, not its management company. R.C. 3314.03(A)(8).

In this case, the White Hat Defendants receive more than twenty percent of the Plaintiff Schools' annual gross revenues. The White Hat Defendants submitted a financial report for each Plaintiff School to the Auditor. The Auditor accepted each of them.¹⁰ However, as the Auditor makes clear, the Plaintiff Schools remain legally responsible for those financial reports. Therefore, they have an absolute right to all information the White Hat Defendants used to prepare them, including (but not limited to) the information used to comply with R.C. 3314.024.

Conclusion

The Auditor has exclusive jurisdiction over regular and special audits of public entities. The Auditor has absolute discretion over any decision to order a special audit. The Auditor has exclusive jurisdiction to determine whether the financial reports that the White Hat Defendants filed on behalf of the Plaintiff Schools satisfy any statutory obligation to account for the use of public funds.

The Plaintiff Schools are entitled to the financial records they seek, for three reasons:

1. The White Hat Defendants received more than twenty percent of the Plaintiff Schools' gross revenue. R.C. 3314.024 requires them to provide the Plaintiff Schools with a detailed accounting of how public funds were spent.
2. Ohio law requires Plaintiff Schools to keep detailed financial records according to rules of the Auditor, in the same manner as all public schools. Although the White Hat Defendants kept those records and filed reports with the Auditor, they did so at all times on behalf of the Plaintiff schools. The information used to prepare those reports has at all times belonged to the Plaintiff Schools, not the White Hat Defendants.

¹⁰ Whether the financial reports that the White Hat Defendants submitted for the Plaintiff Schools are proper is determined entirely by the Auditor. Nothing in this decision should be interpreted to the contrary.

3. The Plaintiff Schools are public offices with non-delegable duties to account for public funds. The Plaintiff Schools entrusted public funds to the White Hat Defendants to operate these community schools on their behalf as their agents. Agents of public offices are public officials, who also have a duty to account for public funds.

Therefore, for the reasons set forth above, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff Schools shall submit a modified discovery request, identifying the information they wish to receive along with a format in which they wish to receive it, by no later than January 6, 2012.
2. The White Hat Defendants may submit objections by no later than January 13, 2012.

A ruling and a deadline for the production of documents will follow shortly thereafter.

SO ORDERED.

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Franklin County Court of Common Pleas

Date: 12-23-2011
Case Title: HOPE ACADEMY BROADWAY CAMPUS -VS- WHITE HAT
MANAGEMENT LLC
Case Number: 10CV007423
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "J. Bender", is written over a circular embossed seal. The seal features a central emblem surrounded by text, likely the official seal of the Franklin County Court of Common Pleas.

/s/ Judge John F. Bender